

REMARKS

The Office Action addresses claims 1-4, 6-10, 12, 13, and 54-66, of which claims 54-66 are allowed and claims 1-4, 6-10, 12, and 13 stand rejected under 35 U.S.C. § 103. Reconsideration is respectfully requested in view of the following remarks

At the outset, Applicants thank Examiner Izquierdo for the courtesy of a telephone interview on February 21, 2008, with both the undersigned attorney and attorney William C. Geary III for Applicants. During the interview agreement was reached that the amendment to claim 1 made herein will obviate the current rejection.

Amendments to the Claims

Applicants amend claim 1 to further clarify that fixing a position of a midline marker marks a midline of a vertebral body by embedding a portion of the midline marker in a face of the vertebral body. While Applicants believe that a midline marker inherently defines a device that marks a midline, in order to expedite the prosecution of this application Applicants add this recitation for further clarification. No new matter is added.

Rejections Pursuant to 35 U.S.C. § 103(a)

Robie, in view of Landry

The Examiner rejects claims 1, 2, and 6-10 pursuant to 35 U.S.C. § 103(a) as being obvious over U.S. Patent Application Publication No. 2002/0161366 to Robie et al. ("Robie") in view of U.S. Patent Application Publication No. 2003/0233145 to Landry et al. ("Landry"). The Examiner argues that the claimed method is taught by Robie, except that Robie does not teach the use of a midline marker as a guide. The Examiner relies on Landry to teach this missing element. At least because Robie does not teach a method that relies on marking a midline and thus does not include teaching a method that includes fixing a position of a midline marker such that a portion of the midline marker embeds in a face of a vertebral body to mark a midline thereof, Applicants disagree.

As amended, claim 1 now specifically recites that fixing a position of a midline marker marks a midline of the vertebral body. Robie fails to teach or even suggest marking a midline or midpoint

with the device that is embedded into the vertebral body to serve as a guide. This is because the purpose of the vertebrae immobilizing template (50) of Robie is to immobilize two vertebrae, not mark a midline. The only mention of a midline in Robie is found on page 4 in paragraph [0050], where it is taught that needle(s) are inserted *into the intervertebral disc* as markers, positioned along the midline, and a radiograph is taken to assure that the location is proper. Robie's needles mark a midline of, and are embedded into, the *implanted intervertebral disc*, not the midline of the vertebral bodies. Robie's teaching related to the identification of the midline of a disc does not suggest the use of Robie's vertebral immobilizing template (50) to mark a midline as claimed by Applicants.

Landry fails to remedy the deficiencies of Robie because it too fails to teach embedding a component into a face of a vertebral body to mark a midline. Landry does not disclose embedding a component into a face of a vertebral body at all, let alone to mark a midline. Accordingly, it cannot be said that Landry, or the combination of Robie and Landry, teaches a method that embeds a midline marker into a face of a vertebral body to mark a midline thereof.

Claim 1, as well as claims 2 and 6-10 which depend therefrom, are thus allowable over Robie in view of Landry.

Robie, in view of Landry, in further view of Michelson

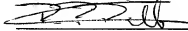
The Examiner also rejects dependent claims 3 and 4 pursuant to 35 U.S.C. § 103(a) as being obvious over Robie in view of Landry in further view of the U.S. Patent Application Publication No. 2002/0058944 to Michelson ("Michelson"). As noted above, claim 1 is allowable over Robie in view of Landry. Michelson, which the Examiner relies on to teach radiographical markers, also does not disclose a method that includes fixing a position of a midline marker such that a portion of the midline marker embeds in a face of a vertebral body to mark a midline thereof. Thus Michelson likewise fails to remedy the deficiencies of Robie and Landry. Accordingly, claims 3 and 4 are also allowable over Robie in view of Landry in further view of Michelson.

Conclusion

As agreed upon during the interview, claims 1-4, 6-10, 12, and 13 distinguish over the references cited by the Examiner and are in a condition for allowance. Claims 54-66 have already been allowed. Applicants respectfully request that the Examiner reconsider the claim rejections and

allow each of claims 1-4, 6-10, 12, 13, and 54-66. If the Examiner believes that an interview would facilitate the resolution of any outstanding issues, he is kindly requested to contact the undersigned.

Respectfully submitted,



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